



सरकारी गजट, उत्तरांचल

उत्तरांचल सरकार द्वारा प्रकाशित

असाधारण

देहरादून, शुक्रवार, 07 जनवरी, 2005 ई0
पौष 17, 1926 शक सम्वत्

भारत निर्वाचन आयोग
निर्वाचन सदन, अशोक रोड, नई दिल्ली-110001

संख्या 82/उत्तरां0-वि0स0/1/2002
नई दिल्ली, 07 जनवरी, 2005

अधिसूचना

लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, 2002 की निर्वाचन अर्जी संख्या 1 में नैनीताल स्थित उत्तरांचल उच्च न्यायालय के तारीख 3 सितम्बर, 2004 के निर्णय को एतद्द्वारा प्रकाशित करता है।

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi-110001

No. 82/UCL-LA/1/2002
Dated New Delhi, January 07, 2005

NOTIFICATION

In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the Judgement dated 3rd September, 2004 of the High Court of Uttaranchal at Nainital in Election Petition No. 1 of 2002.

In the High Court of Uttaranchal at Nainital**Election Petition No. 1 of 2002**

Sri Anil Baluni S/o Pitamber Datt,
R/o village Kashirampur,
Najibabad Road, Kotdwar
District Pauri Garhwal

... Petitioner.

Vs.

Sri Surendra Singh Negi,
S/o Guman Singh Negi,
R/o Lower Kalabahr,
H.N. Bahuguna Marg,
Near P.W.D. Colony, Kotdwar
Uttaranchal, District Pauri Garhwal

... Respondent.

Sri Sri Satya Pal Jain, Sri L.P. Naithani, senior Advocates, and
Sri Rakesh Thapliyal, learned counsel for the petitioner.

Sri Rajendra Kotiyal and Sri V.B.S. Negi learned
Counsel for the respondent.

Dated 3rd September, 2004.

Hon'ble Irshad Hussain

By means of the election petition under section 80/81 of the Representation of the People Act, 1951 (for short 'Act') the petitioner sought to declare the election of the respondent to Uttaranchal Legislative Assembly from 29, Kotdwar Constituency as raul and void and to declare the said Assembly seat as vacant.

2. Elections to the Uttaranchal Legislative Assembly were held in the year 2002. Petitioner filed his nomination to contest the election to the assembly from 29, Kotdwar constituency declaring himself to be a candidate of Bhartiya Janta Party. He filed his nomination papers on 22-1-2002. Last date for filing of the nomination papers was 23.1.2002. The nomination papers and also the Forms "A" and "B" were required to be submitted till 3 p.m. on the said date. Date of scrutiny of nomination papers was 24.1.2002. When the nomination papers were taken up for scrutiny, the Returning Officer found that Form "A" and "B" by the petitioner were submitted at 4.10 p.m. on 23.1.2002 and therefore his nomination papers were rejected.

3. Petitioner came up with the allegations that Form "A" and "B", which were necessary to entitle him to be an official candidate of the Bhartiya Janta Party and its symbol, were submitted on 22.1.2002 itself along with the nomination papers and the Returning Officer on the day of scrutiny of the nomination papers had accepted his nomination papers as valid and made an endorsement on the nomination papers at about 11.30 a.m. on 24.1.2002, but later on rejected the same when he left the office and made interpolations in the order endorsed earlier to indicate that the Forms "A" and "B" had been filed on 23.1.2002 at 4.10 p.m. i.e. after the expiry of the prescribed time. Petitioner alleged to have returned to the office on receiving information about it and lodged protest with the Returning Officer and even to the Election Commission but to no result, hence this petition.

4. The result of the election was declared on 24.2.2002 and the respondent was declared elected to the Assembly. Petitioner claimed that the election of the respondent is liable to be declared void under section 100(1)(c) of the "Act".

5. The respondent contested the petition on the grounds, inter alia, that the petition is not maintainable for want of compliance of requirements of sections 81, 82, 83 and 100(1) (c) of the "Act", that the petitioner did not submit Forms "A" and "B" alongwith nomination papers on 22.1.2002; that the Forms "A" and "B" were not even submitted till 3 p.m. on 23.1.2002 by reason of which the nomination of the petitioner was liable to be rejected; that no interpolation in the order has been made by the Returning Officer and the allegations of the petitioner are false and frivolous; that the nomination papers of the petitioner were rejected in a just and proper manner and the contesting respondent was elected as member of the Assembly in a perfect and legal manner and that the election petition deserves to be dismissed.

6. On the pleadings of the parties, following issues were framed in this petition :--

- (1) Whether the nomination paper of the petitioner was improperly rejected as alleged by the petitioner? If so, its effect?
- (2) Whether the election of the respondent is liable to be declared as void under section 100(1)(c) of Representation of Peoples Act?
- (3) Whether any manipulation in the nomination paper of the petitioner has been made as alleged? If so, its effect?
- (4) Whether the election petition is barred by the provisions of sections 81, 82 and 83 of the Representation of Peoples Act?
- (5) To what relief, if any, is the petitioner entitled?

"FINDINGS"

7. **Issue Nos. 1 and 3:**--The last date for filing of the nomination paper was 23.1.2002 and the nomination papers alongwith Forms "A" and "B" were to be positively submitted till 3 p.m. It is not disputed that the petitioner filed nomination papers at 2.57 p.m. on 22.1.2002. Petitioner however claimed that the nomination papers were filed along with Forms "A" and "B" and that on account of this fact his nomination papers were accepted by the Returning Officer on 24.1.2002 at the time of the scrutiny of the nominations. Petitioner also urged that later on when he left the office of the Returning Officer along with his Election Agent interpolation was made in the endorsement on the nomination papers and by doing so his nomination was rejected on the ground that the Forms "A" and "B" were submitted at 4.10 p.m. on 23.1.2002 i.e., after the expiry of the prescribed time. The respondent urged that the nomination of the petitioner was rightly rejected for the reason that Forms "A" and "B" were not submitted till 3 p.m. on 23.1.2002.

8. Considering the rival contentions it will be appropriate to reproduce the relevant legal provisions as contained in sub-section (1) of section 33; sub-section (1), (2), (4), (6) and (8) of section 36 of the Act Rules 4 and 8 of the Conduct of Election Rule, 1961 (for short Rules 1961) and para.13 of the Election Symbols (Reservation and Allotment) Order 1968 (for short 'Symbols Order, 1968). The above provisions read as under :--

"See 33. Presentation of nomination paper and requirements for a valid nomination-

(1) On or before the date appointed under clause (a) of section 30 each candidate shall, either in person or by his proposer, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued under Section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer :

x x x x

x x x x

x x x x

Sec. 36. Scrutiny of nominations--(1) On the date fixed for the scrutiny of nominations under section 30, the candidates, their election agents, one proposer of each candidate, and one other person duly authorized in writing by each candidate, but no other person, may attend at such time and place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 33.

- (2) The returning officer shall then examine the nomination papers and shall decide all objection which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds :
- (a) x x x x x x x x x x x x
- (b) that there has been a failure to comply with any of the provisions of section 33 or section 34; or
- (c) x x x x x x x x x x x x
- (4) The returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.
- (5) x x x x x x x x x x x x
- (6) The returning officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.
- (7) x x x x x x x x x x x x
- (8) Immediately after all the nomination papers have been scrutinized and decisions accepting or rejecting the same have been recorded, the returning officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid and affix it to his notice board.
- (9) x x x x x x x x x x x x

Rules 4 and 8 of the Rules, 1961, read as under :--

"4 Nomination paper:--Every nomination paper presented under sub-section (1) of section 33 shall be completed in such one of the Forms 2A to 2I, as may be appropriate;

Provided that a failure to complete or defect in completing the declaration as to symbols in a nomination paper in Form 2A or Form 2B shall not be deemed to be a defect of a substantial character within the meaning of sub-section (4) of section 36.

x x x x x x x x x x x x

- (8) **List of validly nominated candidates:--**List of validly nominated candidates referred to in sub-section (a) of section 36 shall be in Form--4.

x x x x x x x x x x x x

9. Paragraph 13 of the Symbols Order, 1968 reads as under :--

" 13. When a candidate shall be deemed to be set up by a political party:--For the purpose of an election from any parliamentary or assembly constituency to which this order applies, a candidate shall be deemed to be set up by a political party in any such parliamentary or assembly constituency, if and only if :

- (a) the candidate has made the prescribed declaration to this effect in his nomination paper;
- (b) a notice by the political party in writing in Form B, to that effect has, not later than 3 p.m. on the last date for making nominations, been delivered to the returning officer of the constituency;
- (c) the said notice in Form B is signed by the President, the Secretary or any other bearer of the party, and the President, Secretary, such other office bearer sending the notice has been authorized by the party to send notice;
- (d) the name and specimen signature of such authorized person are communicated by the party, in Form A to the returning officer of the constituency and to the Chief Electoral Officer of the State of Union territory concerned, not later than 3 p.m. on the last date for making nomination; and
- (e) Form A and B are signed in ink, only by the said office bearer or person authorised by the party;

Provided that no facsimile signature or signature by means of rubber stamp etc. of any such office bearer of authorized person shall be accepted and no form transmitted by fax shall be accepted."

10. It is not in dispute that petitioner filed his nomination papers making a declaration that he is a candidate of the Bhartiya Janta Party. Under para 13 of the Symbols Order, 1968 this was one of the requirement for setting up of a candidate by a recognized or un-recognised political party. The other requirement are that the political party must indicate the name of the approved candidates to the Returning Officer in Form "B" and it must reach the Returning Officer not later than 3.00 p.m. on the last date for making nominations for the election and further that the said Form "B" containing the name of the approved candidate must be signed by the President, Secretary or any other office bearer of the party. The specimen signature of the President or, as the case may be, the Secretary or the authority office bearer of the party signing Form "B" must also be furnished by the party to the Returning Officer in Form "A" not later than 3.00 p.m. on the last date for making nominations. In this case the nomination papers of the petitioner were rejected on the ground that Forms "A" and "B" were submitted at 4.10 p.m. on 23.1.2002 the last date for filing of the nomination. As stated above the case set up by the petitioner is that these forms were delivered by him on 22.1.2002 itself when the nomination papers were submitted to the Returning Officer. Considering the facts of the case the burden to establish that Forms "A" and "B" were also delivered alongwith the nomination papers on 22.1.2002 lay upon the petitioner and to discharge the burden reliance has been placed on the oral evidence as well as on the endorsements allegedly initially made on the nomination papers by the Returning Officer at the time of the scrutiny of the nomination papers on 24.1.2002.

11. In paragraph 11 of the petition it has been specifically pleaded that the petitioner went to submit his nomination papers before the Returning Officer on 22.1.2002 accompanied by Sri Mohan Singh, who had proposed the petitioner's name as a candidate and to whom the petitioner had also appointed his election agent and Sarva Sri Narendra Singh Gosain and Vinod Prasad Nautiyal. Advocates and number of other persons. The nomination papers were submitted at 2.57 p.m. on 22.1.2002 and endorsement to this effect was made by the Returning Officer on all the four nomination papers and which are on the record. Petitioner, Sri Anil Baluni (P.W. 1) testified that Forms "A" and "B" were also submitted by him alongwith the nomination papers at 2.57 p.m. on 22.1.2002. Statement on oath to this effect has also been given by petitioner's election agent Sri Mohan Singh Rawat (P.W. 2). However none of them gave out that the Returning Officer also made any endorsement on Form "A" and "B" in regard to the time of filing of these forms as was done in the case of four nomination papers serial nos. 18, 19, 20 and 21. However there are endorsements on Form "B" (Ext. Kha.1) and Form "A" (Ext. Kha. 2) which have been made to indicate that these were delivered and received by the Returning Officer at 4.10 p.m. on 23.1.2002. In regard to these endorsements there is definite statement of Sri Anil Kumar Yadav (O.P.W. 1) the then Returning Officer and also of Sri Bhagwati Prasad Ghildiyal (O.P.W. 2), who at the relevant date was assisting the Returning Officer in the work assigned in connection with the election, to the effect that these two endorsements were made by them showing that these forms were received at 4.10 p.m. on 23.1.2002. From the cross-examination of both of these officials nothing could be defected is may even remotely suggest that these endorsements were not made when these forms were delivered by the petitioner on 23.1.2002. Both of them were also categorical in their assertion that these forms were submitted at 4.10 p.m. on 23.1.2002 and that these were not filed alongwith nomination papers on 22.1.2002. There is nothing in the evidence of the petitioner and his election agent as may in any way suggest that the above endorsements were made subsequently or manipulated later on to show that these were not filed with the nomination papers.

12. It is also of significance that the petitioner produced his election agent besides himself in oral evidence, but did not examine any independent witness to support the claim that the Form "A" and "B" were also submitted at 2.57 p.m. on 22.1.2002 alongwith nomination papers. As stated above it has been pleaded that the petitioner was also at that time accompanied by Sarva Sri Narendra Singh Gosain, Vinod Prasad Nautiyal, Advocates and number of other persons. Still neither of these two Advocates nor any other person could be produced in evidence to corroborate his evidence and support his allegation.

13. Petitioner, Sri Anil Baluni admitted in his evidence that Sri Bhuvnesh Kharkwal has also filed his nomination papers declaring him to be the candidate of Bhartiya Janta Party. He was suggested that since on 22.1.2002 he was not given relevant forms required for an official candidate of the Bhartiya Janta Party. Sri Bhuvnesh Kharkwal had filed his nomination papers declaring him to be the candidate of the Bhartiya Janta Party. He denied to this suggestion but in the face of the facts of the case it is crystal clear that both the petitioner and Sri Bhuvnesh Kharkwal were the strong contenders for the ticket of Bhartiya Janta Party to contest the assembly election. This appears to be the reason that later on Sri Bhuvnesh Kharkwal contested the election of the assembly from this constituency as Bhartiya Janta Party supported independent candidate. Due to rival claims by these two it is highly probable that the Forms "A" and "B" required for an official candidate of the party could not be delivered to any of these two on 22.1.2002 and both of them filed their nomination papers declaring themselves to be the candidate of the Bhartiya Janta Party with the hope of party's decision in their favour and consequent delivery of the Forms "A" and "B" for submission before Returning Officer. In a situation like this I am not inclined to place implicit reliance on the statement of the petitioner that he was declared to be the official candidate of Bhartiya Janta Party on 17.1.2002 and was also handed over Forms "A" and "B" on 19th January, 2002 itself. Mere mentioning of these dates on the Forms "A" and "B" will also not salvage the situation to the advantage of the petitioner. It is also of significance that the petitioner could have examined any of the office bearers of the Bhartiya Janta Party to support his claim and since none of the office bearers of the party could be produced in evidence, I find it safe to say that the statement of the petitioner does not repose confidence and it can not be accepted that he was handed over Forms "A" and "B" on 19th January, 2002 itself. If it had been so Sri Bhuvnesh Kharkwal would not have filed his nomination papers declaring himself to be the candidate of the Bhartiya Janta Party and in the totality of the circumstances of the case I am not inclined to believe that the Forms "A" and "B" were delivered by the petitioner alongwith the nomination papers on 22.1.2002.

14. On behalf of the petitioner learned Senior Advocate Sri Satya Pal Jain submitted that there is intrinsic evidence on the record to show that the Forms "A" and "B" were in fact submitted per requirement of para 13 of the Symbols Order, 1968 and this was the reason that on the nomination papers serial numbers 18, 19, 20 and 21 the Returning Officer Sri Anil Kumar Yadav (O.P.W. 1) initially made endorsement to the effect that after scrutiny these nomination papers have been found to be valid. Learned counsel drew attention to the endorsements in part-5 of the nomination papers and submitted that the character of the endorsement was, however later on, in the absence of the petitioner and his election agent, changed by making interpolation in the endorsement on the nomination papers to show that the nomination is invalid and therefore rejected by reason of the fact that Forms "A" and "B" were submitted before the assistant of the Returning Officer at 4.10 p.m. on 23.1.2002 i.e., after 3 o'clock, the stipulated time. On the other hand learned counsel for the respondent submitted that the endorsements of rejection of the nomination for the above reason were made by the Returning Officer at the time of the scrutiny and that no manipulation or interpolation was made to change the character of the endorsement to make it show that the nomination papers have been so rejected.

15. Petitioner, Sri Anil Baluni (P.W. 1) stated that his nomination papers were examined by the Returning Officer on 24.1.2002 at 11.30 a.m. and the scrutiny was completed by 11.45 a.m. and his nomination papers were found valid and endorsement to this effect was made by the Returning Officer. At that time the petitioner claimed to have been accompanied by his election agent Sri Mohan Singh Rawat (P.W.2). The petitioner also stated that soon after 11.45 a.m. he left the office of the Returning Officer and started for his constituency and office situate at a distance of about 100 kilometers from there. The petitioner stated to have made a phone call to his office at Kotdwar and then it was told to him that his nomination had been held to be invalid. On receiving this information the petitioner returned to headquarter, Pauri at once but by the time he reached there the office of the Returning Officer had been closed after office hours. The petitioner further stated that he then met the Election Observer at the circuit house and made a complaint to him about it. Petitioner's election agent Sri Mohan Singh Rawat (P.W. 2) also stated same facts in his evidence but it is of significance that petitioner, Sri Anil Baluni has nowhere in his evidence claimed that his election agent had also left the office of the Returning Officer soon after 11.45 a.m. on 24.1.2002 and considering this aspect I am not inclined to believe that there was none left on behalf of the petitioner in the office of the Returning Officer to watch the progress of scrutiny of the nomination papers by the Returning Officer.

As will appear from the provision of section 36 of the 'Act' at the time of the scrutiny of the nominations not only the candidate but his election agent, one proposer and one other person duly authorized in writing by the candidate may attend the proceedings and the Returning Officer shall give all reasonable facilities for examining the nomination papers of the candidates. Petitioner claimed himself to be an official candidate of a national recognized party and therefore I am not inclined to believe that the petitioner would have left the office of the Returning Officer near about 11.45 a.m. on day of the scrutiny and even further leaving none on his behalf there in the office of the Returning Officer to watch the proceedings which is a very important event in the election process. Considering this aspect and also the contradictions in the evidence of P.W. 1 and P.W. 2 as to whether one of them or both of them have left the office of the Returning Officer at about 11.45 a.m. on 24.1.2002 it can not safely be believed that the petitioner or his agent or any other duly authorized person was not there in the office of the Returning Officer till all the formalities of the scrutiny of the nomination papers of the candidates were completed.

16. As is evident from the provision of section 36 of the 'Act' it is pertinent to mention that the process of scrutinisey is completed when the Returning Officer prepare a list of validly nominated candidates that is to say, candidates where nomination have been found valid and affix it to his notice-board. Rule 8 of the Rules 1961 referred above further provide that a list of validly nominated candidates referred to in sub-section (8) of section 86 shall be in Form--4. There can be no gain saying that the scrutiny process gets completed only when the list prepared in Form-4 is affixed to the notice-board of the Returning Officer so that all the candidates may know as to what had happened and whether their nominations have been held to be valid or not and considering this important of the completion of the scrutiny of the nomination is can hardly be accepted or believed that petitioner and his agent etc. have left the office of the Returning Officer at about 11.45 a.m. itself when the process of scrutiny of nominations was still in progress.

17. Petitioner was cross-examined about the import of the preparation of list of validly nominated candidates and affixation of the same on the notice-board. Petitioner Sri Anil Baluni gave evasive reply in this regard by stating that he was not aware of the provision or the process of preparation of list of validly nominated candidates in Form No. 4 soon after the completion of the scrutiny work. He also went on to state that he was not aware as to whether after scrutiny of the nominations on 24.1.2002 his name find place or not in the list of validly nominated candidates prepared in Form-4. The other witness Sri Mohan Singh Rawat (P.W. 2) gave out that till the time he was present in the office of the Returning Officer on the day of scrutiny of the nominations the name of the petitioner Sri Anil Baluni has not been in the list of validly nomination candidates in Form No.--4. From the evidence of both these witnesses it is evident that the name of petitioner has not been placed in the list of validly nominated candidates which as required after completion of the scrutiny and therefore there was no occasion for them to leave the office before completion of the process of scrutiny. Considering the also in my view both the petitioner and his election agent deliberately gave false evidence that they have left the office of the Returning Officer at about 11.45 a.m. and that by 11.45 a.m. the nomination of the petitioner had been found to be valid on scrutiny by the Returning Officer. I also can not loose sight of the fact that both the petitioner and his election agent have not shown by their evidence any urgency to leave the office at about 11.45 a.m. on that crucial day of scrutiny of nominations and this aspect of the matter also lend credence to the inference that both of them have falsely stated that they left the office of the Returning Officer on that day at about 11.45 a.m.

18. As opposed to the above evidence there is cogent and reliable evidence of Returning Officer Sri Anil Kumar Yadav (O.P.W. 1) that on scrutiny, the nomination of the petitioner was not found valid on account of the fact that Form "A" and "B" were not furnished till 3.00 p.m. on 23.1.2002, the last date of filing of the nominations and these were in fact filed on that day at 4.10 p.m. He is also definite in his assertion that the endorsement to this effect and rejection of the nomination was made on the nomination papers of the petitioner in the presence of the petitioner and that no manipulation or interpolation to change the character of the endorsements on the four nomination papers was made to indicate that the nomination has been rejected for the above reason. There is nothing of substance in his cross-examination as may assail his credibility and truthfulness on this count. As stated above no independent witness was examined by the petitioner to support his allegations and in the totality of the circumstances of the case and in view of the false evidence of the petitioner and his election agent, the oral evidence of the Returning Officer fully prevail to rebut the allegations of the petitioner. There can be no gain saying that the endorsements on the top of Form "B" (Ext. Kha. 1) and Form "A" (Ext. Khat. 2), made by the Returning Officer and his assistant

named above, to the effect that these forms were received at 4.10 p.m. on 23.1.2002 fully corroborate the evidence of the Returning Officer.

19. As is obvious from the above discussion and also from the case set up by the petitioner, neither the petitioner nor any of his election agent nor any other person authorized by him have seen the Returning Officer making any manipulation in the endorsements in the nomination papers. Referring to this state of affair learned counsel for the petitioner argued that the clinching nature of intrinsic evidence as well as the list of nominated candidates submitted by the Returning Officer to the Election Commission and the District Election Officer under para 30.1 of the "Hand-Book for Returning Officer" which contain the directives and information for smooth performance of the duties by the Returning Officer clearly prove that subsequently manipulations were made so that the endorsements indicate that the nomination papers have been rejected for the reason stated therein. Intrinsic evidence referred to is the alleged insertion of letter "अ" prior to the already written word "व" in the endorsement and further that addition was made in the endorsement to the effect that Forms "A" and "B" were submitted on 23.1.2002 of 4.10 p.m. before the assistant of the Returning Officer and on this account the nomination has been rejected. As an example the endorsement on one of the nomination paper (serial no. 18) is reproduced here.

“नाम निर्देशन-पत्र क्रम संख्या-18 के परीक्षोपरान्त अवैध पाया गया है।

अभ्यर्थी द्वारा फार्म-ए & बी दिनांक 23-1-2002 को 4.10 पी0एम0

पर नामांकन प्राप्त कर रहे सहायक के समक्ष प्रस्तुत किया है।”

20. From perusal of the above endorsement and similar endorsements on other nomination papers (serial no. 19, 20 and 21) it is evident that the entire endorsement is in the same ink and clearly appear to have been written by using the same pen. It does not appear that endorsement “अभ्यर्थी द्वारा ए & बी...समक्ष प्रस्तुत किया है” was inserted subsequently after addition of letter “अ” before word “वध”, although word “अवैध”, do not appear to have been smoothly written. Since these endorsements were disputed by the petitioner, he sent the same for expert's examination and opinion after comparison with the endorsements made by the Returning Officer on nomination papers of other candidates bearing serial nos. 5, 6, 14 and 15. The Government Expert Sri M.L. Sharma (O.P.W. 3) submitted his report. Ext. 4, together with the photographs of endorsements examined and enlargement of respective words “वैध”-“अवैध” in these admitted and questioned nomination papers. He gave the opinion and supported the same by his evidence that the letter “अ” have been added subsequently and also that the lines reading “अभ्यर्थी द्वारा फार्म प्रस्तुत किया है” have been added the altered word “अवैध”. As stated above even by naked eye there appear to be no subsequent addition of the lines reading “अभ्यर्थी द्वारा फार्म प्रस्तुत किया है” and further that it is not uncommon that when a person, writes or makes an endorsement some natural variation do occur in the writing and in the face of this fact and situation and the evidence on record the opinion of the Hand Writing Expert can not be taken to be conclusive in support of the allegations of the petitioner. It is well settled that the expert's evidence as to hand writing is opinion evidence and it can rarely, if ever, takes the place of substantive evidence. Before accepting such evidence it has to be seen as to whether the opinion is corroborated or not by direct evidence or by circumstantial evidence. Having considered and discussed the evidence in the earlier part of the judgment I am of the firm view that neither the direct evidence nor the surrounding circumstances corroborate the opinion of the Hand Writing Expert and therefore I do not feel it safe to record the finding that any manipulations have been made in the endorsements referred above.

21. In regard to the import of submission of list of nominated candidates to the Election Commission and the District Election Officer under para 30.1 of the “Hand-Book for Returning Officer” immediately after 3 p.m. on the last date for making the nominations it need to be stated at the out set that the compliance of the instructions was made in this case also. The lists submitted in Hindi and English were summoned from the District Election Office, Pauri Garhwal. The certified copy (Ext. 5) was filed by the petitioner. In this list of the constituency 29--Kotdwar, the name of Sri Anil Baluni as a candidate of national political party namely Bhartiya Janta Party finds place at serial number-2.

22. The column no. 6 of the list pertain to information as to whether or not Forms "A" and "B" have been received by 3.00 p.m. on the last date of making the nominations by the candidates. Against the name of the petitioner word "yes" and the list prepared in Devnagari script word "हाँ" has been mentioned against said column. Returning Officer Sri Anil Kumar Yadav (O.P.W. 1) stated in cross examination that the list (Ext. 5) was sent under his signature with correct information but he also stated that in fact he had signed the proforma of the list without entries having been made in it by reposing confidence in his assistant who was supposed to make necessary entries on completion of the formalities. He also gave the reason for it. According to him his wife was admitted in Shyam Mother and Child Health Care at Kotdwar on 23.1.2002 and since he had urgency to visit there he left the office by signing the unfilled proforma meant for submitting the information. He also gave out, that the entries in the said form were subsequently made by his assistant Sri Ghildiyal (O.P.W. 2) and was sent per instructions. Sri Ghildiyal in his cross-examination stated that the list of the candidates under para 30.1 of the instructions of the Hand Book for Returning Officer were sent to the Election Commission and that the duty to comply with the said instructions is of the concerned Returning Officer. Sri Mahendra Prasad (O.P.W. 3) Returning Officer of constituency 32-Lansdowne also had his office in the same building. He gave evidence to the effect that on 23.1.2002 Sri Anil Kumar Yadav had left the office at about 5.30 p.m. for Kotdwar on account of wife's illness after making his signature on the blank form of information which was required to be sent that day and that the required information was sent later on from the office. In cross-examination he stated that he was concerned with the work of the constituency of which he was Returning Officer. However the offices of the Returning Officers of other constituencies of the district Pauri were in the same buildings and if Sri Yadav had told the witness about the illness of the wife and left the office by making signature on the blank form of information there was nothing unusual in it and the evidence of the witness can not be viewed with suspicion. I also cannot lose sight of the fact that filling of the columns of the form was a ministerial act and if Sri Yadav was confident that his assistant will correctly submit the information there was also nothing unusual for him in making signature on the blank form in view of the urgency to leave for Kotdwar where his wife was on account of illness, admitted in a Nursing Home. His evidence in this regard is corroborated by the evidence of C.P.W. 3 who is also a responsible officer and in the totality of the circumstances of the case the evidence is sufficient to prove that the entries in the said form were not made in the presence of the Returning Officer.

23. In regard to the question as to whether the entries in the said form were correctly made or not it need to be stated that despite the admitted fact that Sri Bhuvnesh Kharkwal also filed nomination papers claiming himself to be the candidate of Bhartiya Janta Party his name was not mentioned among the candidates of recognized national and state political parties along with others namely the petitioner Sri Anil Baluni, Sri Anil Kumar Bhandari of Samajwadi Party, Sri Sashikant of Bahujan Samaj Party and Sri Surendra Singh (respondent) of Indian National Congress Column no. 5 of this form is meant for an entry of the name of political party national/state or registered) by which the candidate claims to have been set up. The list, Ext. 5, contain the names of all the candidates under three categories and since Sri Bhuvnesh Kharkwal claimed himself to have been set up by Bhartiya Janta Party his name should have also been mentioned in the first category instead of in the third category of independent candidates. Since it has not been done it is evident that there was every possibility of making a mistake in recording the entries of the form and therefore the possibility cannot be ruled out that despite the petitioner having failed to furnish Forms "A" and "B" 3.00 p.m. on the last date of making nomination an incorrect entry be made in column no. 6 against his name by writing word "yes" in the English form and word "हाँ" in Devnagari script form. It will be pertinent to mention that the Court summoned the list of nominated candidates of all the eight constituencies of district Pauri Garhwal from the District Election Officer and these were sent to the Court vide letter dated 22.3.2004 and are on the record. It has been noticed that for constituency 30--Dhumakot, five candidates have submitted their nomination papers claiming themselves, to be the candidates of recognized national and state political parties. Out of these five, both Sri Khusal Mani at serial no. 1 and Sri Dinesh Chandra Bafodi at serial no. 3 have filed their nominations claiming to be the candidates of Bhartiya Janta Party. The list was submitted by the office of Returning Officer of the said constituency under instructions referred above. Since these two candidates have filed nominations claiming themselves to have been set up by the same recognized political party and their name, also mentioned alongwith others in the first category entry in similar manner was required to be made in the case of the constituency 29--Kotdwar from where as stated above two candidates namely Sri Anil Baluni (petitioner) and Sri Bhuvnesh Kharkwal have filed their nominations claiming

to have been set up by Bhartiya Janta Party. But this has not been done. It is indicative of the fact that mistakes to occur filling the forms or preparing the list to be submitted under the above instructions, and in my view an incorrect entry was made in the above list with regard to the submission of the Form "A" and "B" by the petitioner by 3 p.m. on the last day of filing of nomination.

24. This aspect of the matter may also be considered by another angle. Statutory requirement as discussed in the earlier part of the judgment under section (8) of section 36 of the Act is already there to prepare a list of validly nominated candidates by the Returning Officer soon after the completion of scrutiny process and to affix it on the notice board in form--4 as provided by Rule--8 of the Rules 1961. The petitioner and his agent (P.W. 2) have purposefully shown their ignorance about the statutory compliance learning been made in that

Considering the allegations made by the petitioner independent evidence of unimpeachable character was required to be adduced by the petitioner and there can be no gain saying that evidence of this character must necessarily be of the fact that the name of the petitioner was included in the list of the validly nominated candidates prepared in form-4 soon after the completion of the scrutiny of the nomination papers on 24.1.2002. The petitioner did not deliberately adduce evidence to this effect and an adverse inference therefore can also legitimately be raised to infer that the name of the petitioner was not there in the list prepared in form-4 of the validly nominated candidates prepared in compliance of the statutory provision. In that event the list submitted under the instructions contained in the "Hand Book for Returning Officers" referred to above can not be taken to rebut the above presumption against the petitioner and also the legal effect of the statutory list of validly nominated candidates prepared in Form--4 on the basis of proper scrutiny.

25. Here it also need to be stated that the "Hand Book for Returning Officers" contain instruction which have been issued by the Election Commission for the smooth holding of the election and being merely instructions can not override the provisions of the statute, rules or the order referred above as held by the Apex Court in the matter of **Ramphal Kundon vs. Kamfal Sharma : A.I.R. 2004 Supreme Court 1657**. I therefore do not find any merit in the argument advanced on behalf of the petitioner that the intrinsic evidence as well as the list of nominated candidates submitted per instructions by the Returning Officer establish that manipulations were made in the endorsements on the nomination papers so that the endorsements indicate that the nomination papers have been rejected for the reason stated therein.

26. Learned counsel for the petitioner then submitted that alternatively it has to be seen that non-submission of the Forms "A" and "B" by 3.00 p.m. on the last day of filing of the nomination was not a defect of a substantial character and as mandated by sub-section (4) of section 36 of the Act the Returning Officer should not have rejected the nomination of the petitioner. In support of the submission learned counsel placed reliance on the decision of the Apex Court in the matter of **Rangi Lal Chaudhary vs. Dahu Sao and others; A.I.R. 1962 Supreme Court 1248 (at page 1251-1252)**. The facts of the reported case were at variance as in that case columns 2 and 5 of the part of the nomination papers which were to be filled in by proposer were not properly filled in and were defective and it was urged that the defect there was substantial. The contention was rejected because in column nos. 2 and 5 the name of the constituency, the part of the electoral roll and the serial number in that part were to be given, the purpose of which was to enable the Returning Officer to easily check that the proposer and the candidate are voters on the electoral roll. The defect in the circumstances was held to be a technical one and not of a substantial character. On the other hand in the instant case there was non-compliance of the mandatory provision of section 33 of the Act which require presentation of nomination papers and requirements for a valid nomination in the sense that the Forms "A" and "B" were also to be submitted positively, before 3 o' clock on the last date for making nominations and since this was not done, the defect was of substantial character and the Returning Officer was legally bound to reject the nomination papers of the petitioner. The reported decision is therefore, of no help to the petitioner.

27. Having considered the evidence and circumstances of the case it is also of significance that there is absolutely no suggestion from the side of the petitioner that the Returning Officer was in collusion with any of the candidates who have filed their nomination for the assembly election from that constituency. There is also nothing to suggest that the Returning Officer was in any way opposed to the petitioner and intended to harm him and in a situation like this also it could not safely be accepted that the Returning Officer acted dishonestly in the discharge of his official duty. Here it will be appropriate to refer to a well settled principle in election jurisprudence as observed by the Apex Court in **Jeet Mohinder Singh vs. Harminder Singh Jassi; A.I.R. 2000 Supreme Court 256 (at page 270)** in following words :--

"(i) The success of a candidate who has won at an election should not be lightly interfered with. Any petition seeking such interference must strictly conform to the requirements of the law. Though the purity of the election process has to be safeguarded and the Court shall be vigilant to see that people do not get elected by flagrant breaches of law or by committing corrupt practices, the setting aside of an election involves serious consequences not only for the returned candidate and constituency, but also for the public at large in as much as re-election involves enormous load on the public funds and administration [See Jagan Nath v. Jaswant Singh, AIR 1954 SC 210; Gajanan Krishnaji Bapat v. Dattaji Raghobaji Meghe, (1995), 5 SCC 347; (1995 AIR SCW 3407; AIR 1995 SC 2284)]"

28. In view of the evidence and circumstances discussed above, I do not find any merit in the case set-up by the petitioner and I accordingly hold that the nomination paper of the petitioner was not improperly rejected and also that no manipulation or interpolation in the nomination paper of the petitioner has been made by the Returning Officer.

Both the issues are decided against the petitioner.

29. Issue No. 4 : Section 81 of the 'Act' requires that an election petition shall be presented on the grounds stated therein and the submission of the learned counsel for the respondent was that the statement made in the petition is vague and do not disclose ground of presentation of the petition. The submission carry no force in view of the specific plea raised by the petitioner. As regards section 82 of the 'Act', it pertain to joinder of necessary parties in the petition and the respondent raised the plea that considering the allegations of improper rejection of the nomination paper by the Returning Officer, the said officer should have been impleaded as a respondent in this petition. A Returning Officer could not have been a contesting party to the petition therefore there was no need to implead the said officer as party to the petition. Section 83 of the 'Act' deals with contents of petition and it states that an election petition shall contain a concise statement of material facts on which the petitioner relies and further that the petition shall be signed by the petitioner and varified in the manner laid down in the Code of Civil Procedure. I am of the view that in the petition material facts have been disclosed and verification as also been properly made by the petitioner. On the basis of the petition not disclosing the name of the person who allegedly told the petitioner that his nomination paper had been rejected it cannot safely be accepted that the petition does not contain concise statement of material facts.

reason aforesaid the issue is answered in the negative respondent.

30. Nos. 2 and 5 : Since the election of the returned candidate is to be declared void on the ground that the nomination of the petitioner has been improperly rejected by the Returning Officer the learned counsel for the petitioner submitted that the Court is legally obliged to take a decision about the propriety of the nomination irrespective of the decision of the Returning Officer on the material placed before him. Learned Senior Advocate in support of his submission placed reliance on the decision of the Apex Court in the matter of **N.T. Veluswami Thevar v. Raja Nainar and others : A.I.R. 1959 Supreme Court 422**. The material on record and the circumstances have been considered and discussed in detail in the earlier part of the judgment and the inquiry as regards the question in issue in this petition has been made also independently and the material which was before the Returning Officer and as a result of the same. I am also of the view that the petitioner was not qualified to contest the election on account of non compliance of requirements of a valid nominations. Therefore, the nomination of the petitioner has not been improperly rejected and the election of the returned candidate, the respondent to the Uttaranchal assembly from 29. Kotdwar constituency cannot be declared to be void as contemplated under section 100(1)(c) of the 'Act'.

31. In view of the findings aforesaid the petitioner is not entitled to the relief claimed in the petition and the same is liable to be dismissed with costs.

Order

The election petition filed by the petitioner Sri Anil Baluni is dismissed with costs of Rs. 5,000/-- (five thousands).

Sd/--

(Irshad Hussain, J.)

Seal of High Court of Uttaranchal.

By Order.

S. K. KAURA,

Secretary,

Election Commission of India.